

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

ORIGINAL FILED

DEC 16 2004

LARRY W. PROPPES, CLERK
COLUMBIA, S.C.

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

GEORGE HEFFERNAN,
a/k/a GEORGE W. MARSHALL,
Defendant.

CIVIL ACTION NO:

4 0 4 2 3 3 0 2 2 5

COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE
RELIEF, AND FOR CIVIL
MONETARY PENALTIES
UNDER THE COMMODITY
EXCHANGE ACT, AS
AMENDED, 7 U.S.C. §§ 1, *et seq.*

I.
SUMMARY

1. As is more fully set forth below, Defendant George Heffernan, also known as George W. Marshall, ("Heffernan") has engaged in acts and practices which constitute violations of the Commodity Exchange Act, as amended, (the "Act"), 7 U.S.C. §§ 1 *et seq.* (2002), and Commission Regulations, 17 C.F.R. §§ 1 *et seq.* (2004) ("Regulations"), by: (i) employing a scheme to defraud a client or prospective client; (ii) acting as an unregistered commodity pool operator; (iii) soliciting customers for a commodity pool without making required disclosures; and (iv) violating an order of the Commodity Futures Trading Commission ("Commission").

2. In July 2004, Heffernan founded a commodity trading pool under the name "Index Analysis Pool, L.P." ("Index Analysis Pool" or "the pool"). Heffernan registered the pool as a South Carolina limited partnership, organized for the purpose of investing pooled monies in various commodity futures contracts. At all times relevant to the Complaint, Heffernan acted as the general partner and commodity pool operator ("CPO") for the pool.

Heffernan has solicited clients and prospective clients by making false representations regarding the profitability of the pool.

3. Prior to and contemporaneous with his operation of the Index Analysis Pool, Heffernan acted as a commodity trading advisor ("CTA") offering trading methods, advice and services for compensation under various names. Since at least February 2003, Heffernan has marketed this service under the name "Index Analysis Service." Through an Internet website, located at www.indexanalysisservice.com, Heffernan offered for sale a daily electronic mail subscription service that provided trading advice for S&P 500 and Nasdaq futures contracts, as well as two commodity futures trading methods, marketed as: (i) "The Index Analysis No Loss – Hedge Trading Method;" and (ii) "The Index Analysis Stop Loss – Hedge Trading Method." Heffernan offered these two trading methods for sale for \$25,000 and \$5,000, respectively, by making fraudulent representations regarding their profitability.

4. The violations of the Act and Regulations alleged in this Complaint are the most recent in Heffernan's long history of illegal conduct. In two separate proceedings prior to the filing of this Complaint, the Commission and the United States District Court for the Southern District of Georgia each found that Heffernan violated the Act and Regulations by, among other things, employing a fraudulent scheme designed to defraud his clients and prospective clients.

5. Despite these two prior actions, Heffernan continues to blatantly defy the law through ongoing violations of the Act, Regulations, and a Commission Order. From at least August 2003 forward, Heffernan has violated Section 4o of the Act and Regulation 4.41(a) by touting his CTA services and commodity pool through inherently fraudulent profit guarantees. Further, since July 2004, Heffernan has violated section 4m(1), 7 U.S.C. § 6m(1)(2002) (hereafter "§4m(1) of the Act"), and Commission Regulation 4.21, 17 C.F.R. § 4.21 (2004)

(hereafter "Regulation 4.21"), by making use of interstate commerce in connection with a commodity pool while acting as an unregistered commodity pool operator, and failing to make required disclosures in connection with the delivery of a subscription agreement for a commodity pool, respectively.

6. Furthermore, from August 2003 forward, Heffernan has repeatedly violated Section 6c of the Act, 7 U.S.C. § 13a-1 (2002) (hereafter "§ 6c of the Act"), by violating terms of a Commission Order that required him to: (i) cease and desist from violating anti-fraud provisions of the Act and Regulations; and (ii) make certain disclosures when representing the financial benefits associated with any commodity trading advisory service.

7. Accordingly, pursuant to Section 6c of the Act, the Commission brings this action to enjoin Heffernan's unlawful acts and practices and to compel his compliance with the Act, Regulations, and Order. In addition, the Commission seeks a civil monetary penalty and such equitable relief as this Court may deem necessary or appropriate, including disgorgement of Defendant's ill-gotten gains and customer restitution.

8. Given the Defendant's long pattern of fraudulent activity, he is likely, unless restrained and enjoined by this Court, to continue to engage in the acts and practices alleged in the Complaint, as more fully described below.

II. JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to Section 6c of the Act, which provides that whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order promulgated thereunder, the Commission may bring an action in the

proper District Court of the United States against such person to enjoin such practice, or to enforce compliance with the Act, or any rule, regulation, or order thereunder.

10. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002), because the Defendant is found in, inhabits, or transacts business in the District of South Carolina, and the acts and practices in violation of the Act have occurred within this District, among other places.

III. THE PARTIES

11. **Plaintiff Commodity Futures Trading Commission** is the independent federal regulatory agency charged with the administration and enforcement of the Act, as amended, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* The Commission is located at 1155 21st Street, NW, Washington, D.C. 20581.

12. **Defendant George Heffernan**, also known as George W. Marshall, an individual, resides at 405 Sixty-Eighth Avenue North, Myrtle Beach, South Carolina 29572. He has never been registered with the Commission in any capacity.

IV. FACTS

A. Prior Actions Against Heffernan

13. During the period of at least June 1999 through April 2000, Heffernan marketed his commodity trading advisory services through a series of fraudulent misrepresentations, including claims that his trading system was 85% accurate and generated profits of \$12,570 per contract.

14. Based on those misrepresentations, the Commission entered an order on September 6, 2000 filing and simultaneously settling an administrative proceeding against

Heffernan, CFTC Docket No. 00-29 ("September 2000 Order"). The Commission's Order contained findings, among others, that Heffernan had employed a scheme to defraud a client and engaged in a course of business that operated as a fraud upon a client while acting as a CTA, in violation of Section 4o of the Act, 7 U.S.C. § 6o (hereafter "§4o of the Act") and advertised in a manner that employed a scheme to defraud clients and prospective clients while acting as a CTA, in violation of Section 4.41(a) of the Commission's Regulations, 17 C.F.R. § 4.41(a) (hereafter "Regulation 4.41(a)).

15. The September 2000 Order, among other things, required Heffernan to cease and desist from violating anti-fraud provisions of the Act and Regulations including Section 4o and Regulation 4.41(a), *see September 2000 Order*, Section VI, paragraph 1, and required Heffernan to comply with certain undertakings. One such undertaking required that Heffernan:

"Not make any representation of financial benefits associated with any commodity futures or options trading system or advisory service without first disclosing, prominently and conspicuously, that futures trading involves high risks with the potential for substantial losses."

September 2000 Order, Section VI, paragraph 3(c).

16. Nevertheless, within two months of the Order, Heffernan blatantly violated its terms by engaging in a scheme to defraud clients and prospective clients and ignoring the undertaking set forth in Section VI, paragraph 3(c). On September 11, 2001, the Commission filed suit in the United States District Court for the Southern District of Georgia to enforce the September 2000 Order and prosecute Heffernan's new violations of the Act and Regulations. *See CFTC v. Heffernan*, 245 F.Supp. 2d 1276 (S.D. GA 2003).

17. On February 18, 2003, the United States District Court for the Southern District of Georgia granted a Commission motion for summary judgment, finding that Heffernan violated

the September 2000 Order, antifraud provisions of the Act and Regulations, and disclosure requirements of the Regulations.

18. Moreover, the Court specifically found that Heffernan violated Section VI, paragraph 3(c) of the Order by publishing newspaper advertisements that made representations of financial benefit associated with his CTA services, without including a risk disclaimer within the text of the advertisement, as required by the Order.

19. On August 4, 2002, the Southern District of Georgia entered an Order requiring Heffernan to disgorge \$275,000 in ill-gotten gains and pay a civil monetary penalty of \$125,000 for his illegal conduct.

B. Fraudulent Profit Guarantees

20. Beginning in August 2003 and continuing to date, Heffernan solicited customers for his CTA services and Index Analysis Pool through inherently fraudulent profit guarantees, which he made in solicitation letters, in an offering memorandum for the pool, on his Index Analysis Internet Website and in newspaper advertisements.

21. During the period of July 2004 through September 2004, Heffernan sent a pool solicitation letter to at least two individuals, which contained the following profit guarantees:

- (a) "It is mathematically impossible for the Index Analysis Hedge Trading Method to lose."
- (b) "The No Loss Hedge Trading Method produces an average of 62 points per week."
- (c) "Worst case results are projected to be 25 points per week on the no loss."
- (d) "Based on the average case results the projected return on \$350,000 in the fund will be \$317,200 per year [90.6% return per year]."

(e) "The minimum projected result is a 25% return on investment each year.

The maximum is unlimited. However, a reasonable goal will be to double the investment capital each year."

22. Heffernan made similar profit guarantees in a thirty-seven page commodity pool "offering memorandum" that he disseminated to at least one individual during the period of July 2004 through September 2004. These profit guarantees include the following statements:

(a) "In the summer of 2002, Heffernan developed a No Loss Method."

(b) "The Index Analysis Trading Method does not have a draw down. Draw down occurs when you take losses..."

23. From August 2003 forward, Heffernan touted his CTA services and the Index Analysis Pool on his Internet Website through profit guarantees, including the following statements:

(a) "Index Analysis No Loss Hedge Trading Method is the traders holy grail. The Hedge Trading Method does not have losses."

(b) "For each contract, this trade generates from 0 to 65 points of profit per week with no losses."

(c) "This is a no loss hedge fund!"

24. During the period of August 2003 through December 2004, Heffernan published at least eighteen advertisements in *Investor's Business Daily* newspaper and *Futures Magazine*, which touted his advisory service and pool trading methods through the following profit guarantees:

(a) "100 Accurate"

(b) "No Loss" or "No Losses"

(c) "Very Profitable"

(d) "25% to 100% return"

25. Heffernan published each of the advertisements referenced in paragraph 23 without including a disclaimer within the text of the advertisement.

C. Heffernan Acted as an Unregistered Commodity Pool Operator

26. In or around July 2004, Heffernan began soliciting members of the public to purchase units in his Index Analysis Pool at a price of \$1,000 a unit, requiring a minimum investment of \$10,000, or 10 units. According to Heffernan's solicitation materials and offering memorandum, Heffernan intended to sell subscriptions to up to ninety-nine individuals, raising gross capital contributions of between Five Hundred Thousand Dollars and Three Million Dollars.

27. During the period of July 2004 through September 2004, Heffernan marketed the pool to at least two members of the public located within the United States. Heffernan solicited these individuals through a promotional letter that he delivered via electronic mail, an instrumentality of interstate commerce. In addition to the promotional letter, Heffernan delivered a thirty-seven page offering memorandum and subscription agreement to at least one of these individuals.

28. According to the Index Analysis Pool offering memorandum, Heffernan intended to be compensated for his work as the CPO by collecting a monthly "management fee" of 0.5 percent of the pool's value, as well as 44 percent of any trading profits realized by the pool.

29. In or around November 2004, Heffernan opened a commodity futures trading account and utilized monies from a bank account in the name of "Index Analysis Pool, L.P." to fund the account. Heffernan used the alias "George W. Marshall" to open the commodity futures

trading account in order to avoid detection. Among other means, Heffernan utilized the mails, telephone, and electronic mail, all instrumentalities of interstate commerce, to open and fund this commodity futures trading account.

D. Delivery of Subscription Agreement Without Making Required Disclosures

30. Commission Regulation 4.21 requires that a CPO registered or required to be registered under the Act must make specific disclosures, as outlined in Commission Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25 (hereafter Regulations 4.24 and 4.25), to prospective pool participants no later than the time he delivers a subscription agreement to the prospective pool participant. These disclosures are to be made in the form of a disclosure document.

31. Heffernan was required to be registered under the Act, and therefore was required to deliver a disclosure document to prospective pool participants in accordance with Commission Regulations 4.21, 4.24, and 4.25.

(a) Failure to Make Required Cautionary Statement

32. Commission Regulation 4.24(b) requires that a disclosure document mandated by Commission Regulation 4.21 include a specific three paragraph cautionary statement, the exact text of which is set forth in Regulation 4.24(b), immediately following any disclosure required to appear on the cover page of the disclosure document.

33. Subsequent to July 1, 2004, Heffernan delivered a subscription agreement to at least one prospective pool participant without delivering a disclosure document that contained the cautionary statement mandated by Commission Regulation 4.24(b).

(b) Failure to Disclose Break-Even Point

34. Commission Regulation 4.24(d)(5) provides that a disclosure document required under the Act must disclose the pool's break-even point, or trading profit that a pool must realize

in the first year of a participant's investment to equal all fees and expenses such that such participant will recoup his initial investment.

35. Commission Regulation 4.24(i)(6) requires that the CPO must provide, in tabular format, an analysis setting forth how the break-even point for the pool was calculated. This analysis must include all fees, commissions and other expenses of the pool.

36. Subsequent to July 1, 2004, Heffernan delivered a subscription agreement to at least one prospective pool participant without delivering a disclosure document that set forth the pool's break-even point, as required by Commission Regulations 4.24(d)(5) and 4.24(i)(6).

(c) Failure to Disclose Prior Litigation

37. Commission Regulation 4.24(l) provides that a disclosure document required under the Act, must disclose any material administrative, civil, or criminal action against the CPO, which occurred within the previous five years. Such disclosure must be made regardless of whether the action is pending or concluded.

38. As the Commission set forth in paragraphs 4, and 13 through 19 above, Heffernan has been a defendant or respondent in two separate actions related to his activities as a commodity trading advisor within the past five years. In each of these actions, Heffernan was found liable for violating provisions of the Act and Regulations, including anti-fraud prohibitions.

39. On at least one occasion since July 2004, Heffernan delivered a subscription agreement to a prospective pool participant without delivering a disclosure document that disclosed his prior litigation with the Commission, as required by Commission regulation 4.24(l)

(d) Failure to Disclose Trading History

40. Commission Regulations 4.24(n) and 4.25(c)(ii)(2) require a CPO of a pool that has less than a three year operating history, to provide a disclosure document to prospective pool participants at or before the delivery of a subscription agreement, which discloses the performance of all accounts the CPO traded during the previous five years.

41. During the period of July 1999 through July 2004, Heffernan exercised trading authority over at least two commodity futures trading accounts. Heffernan actively traded these two known accounts during the period of September 1999 through January 2001, producing net losses that exceeded \$20,000.

42. In or about July 2004, Heffernan delivered a subscription agreement to at least one prospective pool participant for his Index Analysis Pool, a pool with less than a three year operating history, without disclosing the performance of commodity futures trading accounts that he traded during the previous five calendar years, in accordance with Regulations 4.24 and 4.25.

V.

VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND COMMISSION REGULATIONS

COUNT I

**VIOLATION OF SECTION 4o(1) OF THE ACT, 7 U.S.C. § 6o(1) AND
COMMISSION REGULATION 4.41(a), 17 C.F.R. § 4.41(a): FRAUD BY A
COMMODITY TRADING ADVISOR**

43. Paragraphs 1 through 42 are realleged and incorporated herein by reference.

44. Section 1a(6) of the Act, 7 U.S.C. § 1a(6) defines a CTA as any person who, *inter alia*, for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of

trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market.

45. Section 4o(1) of the Act makes it unlawful for a CTA, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly (A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or (B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

46. Commission Regulation 4.41(a) makes it unlawful for a CTA, or any principal thereof, to advertise in a manner which: (1) employs any device, scheme or artifice to defraud any client or prospective client; or (2) involves any transaction, practice or course of business which operates as a fraud or deceit upon any client or any prospective client.

47. Through the conduct described in paragraphs 23 and 24 above, Heffernan, while acting as a CTA, by using the mails or other means or instrumentalities of interstate commerce (i) employed devices, schemes or artifices to defraud clients or prospective clients, and (ii) engaged in transactions, practices or courses of business which operated as a fraud or deceit upon clients or prospective clients, in violation of section 4o(1) of the Act.

48. Through the conduct described in paragraphs 21- 24 above, Heffernan, while acting as a CTA, included fraudulent representations in his advertising and promotional material in violation of section 4.41(a) of the Commission's Regulations.

49. Each fraudulent profit guarantee, misrepresentation, and omission made by Heffernan in his promotional material, on his website, and in his advertising, including but not limited to those specifically alleged herein, constitutes a separate and distinct violation of Section 4o of the Act and Regulation 4.41(a).

COUNT II

VIOLATION OF SECTION 4o(1) OF THE ACT, 7 U.S.C. § 6o(1) AND COMMISSION REGULATION 4.41(a), 17 C.F.R. § 4.41(a): FRAUD BY A COMMODITY POOL OPERATOR

50. Paragraphs 1 through 42 are realleged and incorporated herein by reference.

51. A commodity pool is defined in Commission Regulation 4.10(d)(1), 17 C.F.R. § 4.10(d)(2004), as any investment trust, syndicate or similar form of enterprise engaged in the business of investing its pooled funds in trading commodity futures and options.

52. A commodity pool operator is defined in Section 1a(5) of the Act, 7 U.S.C. § 1(a)(5)(2002), as any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith solicits, accepts or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market.

53. Section 4o(1) of the Act makes it unlawful for a CPO by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly (A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or (B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

54. Commission Regulation 4.41(a) makes it unlawful for a CPO, or any principal thereof, to advertise in a manner which: (1) employs any device, scheme or artifice to defraud any client or prospective client; or (2) involves any transaction, practice or course of business which operates as a fraud or deceit upon any client or any prospective client.

55. Through the conduct described in paragraphs 2 and 21 through 24 above, Heffernan, while acting as a CPO, by using the mails or other means or instrumentalities of interstate commerce (i) employed devices, schemes or artifices to defraud clients or prospective clients, and (ii) engaged in transactions, practices or courses of business which operated as a fraud or deceit upon clients or prospective clients, in violation of section 4o(1) of the Act.

56. Through the conduct described in paragraphs 2 and 21 through 24 above, Heffernan, while acting as a CPO, included fraudulent representations in his advertising and promotional material in violation of section 4.41(a) of the Commission's Regulations.

57. Each fraudulent profit guarantee, misrepresentation, or omission made by Heffernan in his promotional material, on his website, and in his advertising, including but not limited to those specifically alleged herein, constitutes a separate and distinct violation of Section 4o of the Act and Regulation 4.41(a).

COUNT III

VIOLATION OF SECTION 4m(1) OF THE ACT, 7 U.S.C. 6m(1): ACTING AS AN UNREGISTERED COMMODITY POOL OPERATOR

58. Paragraphs 1 through 42 are realleged and incorporated herein by reference.

59. Section 4m(1) of the Act makes it unlawful for a CPO to make use of the mails or any instrumentality of interstate commerce in connection with his business as a CPO, unless registered under the Act as a CPO, or operating under a proper registration exemption.

60. The exemptions from registration as a CPO are found in Commission Regulation 4.13, 17 C.F.R. § 4.13 (2004). Heffernan does not meet any of the criteria for exemption found in this Regulation as: (i) he intended to be compensated for his work as a CPO; (ii) he intended to operate a pool with up to ninety-nine participants and raise gross capital contributions of

between Five Hundred Thousand Dollars and Three Million Dollars; and (iii) he marketed interests in Index Analysis Pool to members of the public within the United States.

61. Heffernan did not meet any applicable exemption from the CPO registration provisions of the Act or Commission Regulations.

62. Through the conduct described in paragraphs 2 and 26 through 29 above, Heffernan, while acting as an unregistered CPO, made use of an instrumentality of interstate commerce in connection with his business as a CPO in violation of Section 4m(1) of the Act.

63. Each use of interstate commerce by Heffernan in connection with his Index Analysis commodity pool, while acting as an unregistered CPO, including but not limited to those specifically alleged herein, constitutes a separate and distinct violation of Section 4m(1) of the Act.

COUNT IV

VIOLATION OF COMMISSION REGULATION 4.21, 17 C.F.R. § 4.21: FAILURE BY CPO TO MAKE REQUIRED DISCLOSURES

64. Paragraphs 1 through 42 are realleged and incorporated herein by reference.

65. Regulation 4.21(a), 17 C.F.R. § 4.21(a), provides that a CPO registered or required to be registered under the Act must deliver or caused to be delivered to a prospective participant in a pool that it operates or intends to operate a Disclosure Document for the pool prepared in accordance with Regulations 4.24 and 4.25, no later than the time it delivers to the prospective participant a subscription agreement for the pool.

66. Heffernan was required to be registered as a CPO, as he did not meet any applicable exemption from the CPO registration provisions of the Act or Commission Regulations.

67. Through the conduct described in paragraphs 2 and 26 through 42, Heffernan, while acting as a CPO required to be registered under the Act, violated Commission Regulation 4.21 by delivering a commodity pool subscription agreement without making required disclosures.

68. Each failure by Heffernan to make required disclosures in connection with the delivery of a commodity pool subscription agreement, including but not limited to those specifically alleged herein, constitutes a separate and distinct violation of Regulation 4.21.

COUNT V

VIOLATION OF THE COMMISSION'S ORDER OF SEPTEMBER 6, 2000 AND SECTION 6c OF THE ACT

69. Paragraphs 1 through 42 are realleged and incorporated herein by reference.

70. On September 6, 2000, the Commission issued an Order pursuant to §§ 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9, 13b and 15 (2002). Section VI, paragraph 1 of the Order, directs Heffernan to cease and desist from violating Sections 4o(1)(A) and (B) of the Act and Commission Regulation 4.41(a).

71. Through the conduct described in paragraphs 20 through 24 above, Heffernan has violated Section VI, paragraph 1 of the Order, and Section 6c of the Act.

72. The Order, also required Heffernan to comply with the undertaking outlined in Section VI, paragraph 3(c), as more fully described in Paragraph 15 above.

73. Through the conduct described in paragraphs 24 through 25 above, Heffernan has violated Section VI, paragraph 3(c) of the Order, and Section 6c of the Act.

74. Each act by Heffernan in violation of the Order, including but not limited to those specifically alleged herein, constitutes a separate and distinct violation of Section 6c of the Act.


VI.
RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1(2002), and pursuant to its own equitable powers, enter:

- A. An order of permanent injunction enjoining Heffernan from:
- (1) acting as an unregistered CPO or associated person of a CPO in violation of Section 4m of the Act, 7 U.S.C. § 6m, by engaging, without Commission registration or an applicable exemption or exclusion from registration, in a business that is in the nature of an investment trust and by (i) soliciting, accepting or receiving funds or property for the purposes of participating in a commodity pool, or (ii) supervising persons so engaged;
 - (2) violating Commission Regulation 4.21, 17 C.F.R. § 4.21, by delivering a subscription agreement for a commodity pool to a prospective pool participant without delivering a disclosure document with required disclosures; and
 - (3) violating the Commission's September 6, 2000 Order.
- B. An order requiring Heffernan to pay civil penalties under the Act in the amount not to exceed the higher of \$120,000 or triple the monetary gain to him for each violation of the Act, as described herein;
- C. An order requiring Heffernan to disgorge all benefits received from acts or practices, which constitute violations of the Act as described herein, including pre-judgment interest.
- D. An order requiring Heffernan to make restitution to every customer whose funds were received or utilized by him as a result of acts and practices which constituted violations of the Act, as described herein, including pre-judgment interest; and,
- E. Such other remedial ancillary relief as the court may deem necessary and appropriate.

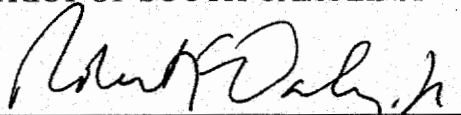
December 16, 2004

Respectfully submitted,



Theodore J. Dowd
Attorney for Plaintiff
U.S. Commodity Futures Trading
Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20036
(202) 418-5320
(202) 418-5523 (fax)

J.STROM THURMOND, JR.
UNITED STATES ATTORNEY
DISTRICT OF SOUTH CAROLINA

By: 

Robert F. Daley, Jr. (ID # 6460)
Assistant United States Attorney
1441 Main Street, Suite 500
Columbia, South Carolina 29201
(803) 929-3000
(803) 254-2912 facsimile